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RUEHNE/AMEMBASSY NEW DELHI PRIORITY 9032
RUEATRS/DEPT OF TREASURY WASHINGTON DC PRIORITY
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC PRIORITY
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DEPT FOR SA/INS
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SUBJECT: 2006 INVESTMENT CLIMATE STATEMENT

REF: 05 SECSTATE 202943

¶1. (SBU) This is Post's 2006 Investment Climate Statement, per reftel. Post has also sent the Investment Climate Statement by unclassified email, per reftel.

Begin Text.

INVESTMENT CLIMATE STATEMENT

-- OPENNESS TO FOREIGN INVESTMENT

Although the Government of Nepal (GON) is open to foreign direct investment, implementation of its policies is often distorted by bureaucratic delays and inefficiency. At present, there are 1,025 foreign investment projects in Nepal, worth a total of approximately USD 1.73 billion according to official GON statistics. Indian ventures lead the list with 320 projects, or approximately 31 percent. The U.S. ranks fourth with 95 ventures, or approximately 9 percent. China, Norway, Japan, South Korea and Germany are also prominent.

Government policy changes have signaled to foreign investors that Nepal is open for business. In 2005, the government opened up certain service sectors to foreign investment. Progress has been made in allowing private operations in some sectors that were previously government monopolies, such as telecommunications and civil aviation. Licensing and regulations have been simplified, and 100 percent foreign ownership is allowed. New banking institutions and a nascent stock exchange provide alternative sources of investment capital.

Nevertheless, significant problems remain. They include lack of direct access to seaports (currently all products imported by ship from third countries enter through Kolkata, India's inefficient river port), difficult land transport, lack of trained personnel, scarce raw materials, inadequate power (especially outside the Kathmandu Valley), insufficient water supply, non-transparent and capricious tax administration, inadequate and obscure commercial legislation, and unclear rules regarding labor relations. Policies intended to establish a "one window policy" and simplify necessary interactions between investors and the host government have produced few results. Furthermore, there is often a wide discrepancy between the letter of the law and the law's implementation. Foreign investors constantly complain about complex and opaque government procedures and a working-level

attitude that is more hostile than accommodating.

The government is aware of the deficiencies in Nepal's investment climate and is slowly moving toward more investor-friendly arrangements. Policies regarding hydropower generation, for instance, have changed to open the sector to private development. By involving the private sector in the generation, transmission, and distribution of power, the GON intends to diminish the role of Nepal's Electricity Authority. A few sizable private-sector hydropower projects have either begun operation or are in the planning stages. Additionally, the Foreign Investment and Technology Transfer Act of 1996 abolished the minimum capital investment requirement and eliminated significant barriers to foreign investment. However, there is occasional backsliding. The same Act also closed the Nepali market to foreign investment in business and management consulting, accounting, engineering and legal services. A hydropower policy announced in October 2001 was expected to boost the flow of foreign investment into the hydropower s ector of Nepal. However, political instability, a deteriorating security environment caused by the Maoist insurgency, a lengthy and cumbersome licensing process, and the failure to finalize a blanket electric power trade agreement with India, which is the only potential market for any exportable electricity produced in Nepal, all contributed to the indifferent attitude shown by foreign investors toward investing in Nepal's hydropower sector.

Legislation

The most significant foreign investment laws are the Foreign Investment and One Window Policy of 1992; the Foreign Investment and Technology Transfer Acts of 1992 and 1996; the

Finance Act of 2002 and the recent Finance Ordinance 2005 (an annual budget act); the Immigration Rules of 1994; the Customs Act of 1997; the Industrial Enterprises Act of 1997; the Electricity Act of 1992; the Privatization Act of 1994; and the Patent, Design and Trademark Act of 1965. In a positive development, Nepal passed the Copyright Act in 2002. This Act includes all types of electronic and electrical audio video materials, provides for financial penalties as well as imprisonment, and provides for confiscation of sold and published unauthorized materials. The offender would also have to pay compensation claimed by the copyright holder. However, the revised Copyright Act is not yet to the level required for trade-related intellectual property rights necessary under the World Trade Organization. Revisions are likely, as Nepal acceded to the WTO in April 2004.

The Foreign Investment and One Window Policy of 1992 restates the desired benefits from foreign investment; lists acceptable forms of investment; allows for foreign shares up to 100 percent in business areas not on a "negative list"; establishes currency repatriation guidelines; and outlines visa arrangements, arbitration guidelines, and a special "one window committee" for foreign investors. The Foreign Investment and Technology Transfer Act, as revised in 1996, eliminates the minimum investment requirement; clarifies rules relating to business and resident visas; exempts interest on foreign loans from tax; and gives contract terms precedence over Nepali law in investments valued at more than Nepali rupees (NRS) 500 million (approximately USD 7.0 million). The 2005 Finance Ordinance outlines customs, duties, export service charges, sales, airfreight and income taxes, and other excise taxes that affect foreign investment. The Immigration Rules of 1994 describe visa regulations. The Customs Act and the Ind ustrial Enterprises Act, as revised in 1997, establish invoice-based customs valuations and eliminate many investment tax incentives, installing in their place a lower, uniform rate. The Electricity Act defines special terms and conditions for investment in hydropower development. The Privatization Act of 1994 authorizes and defines the procedures for privatization of state-owned enterprises to broaden participation of the private sector in the operation

of such enterprises. The 2002 Copyright Act and the 1965 Patent, Design and Trademark Act define the terms and conditions of intellectual property rights protection.

Institutional Arrangements

The Department of Industry is designated as the "one window servicing agency" with the Industrial Promotion Board as a focal point for foreign investment under the Foreign Investment and Technology Transfer Act. The Department of Industry facilitates corporate registration, land transfers, utility connections, administrative services agreements, and coordination among various agencies. The Investment Promotion Board (IPB), chaired by the Minister of Industry, Commerce and Supplies, is the primary government agency responsible for foreign investment. The IPB is intended to coordinate policy-level institutions, establish guidelines for economic policies, approve or disapprove foreign investment proposals, and determine applicable investment incentives. The Department of Industry (under the Ministry of Industry, Commerce and Supplies) registers and classifies foreign investments. It also serves as the secretariat for the "one window servicing agency," which manages the income tax and duty drawbacks granted t
o some foreign investments.

Current administrative procedures do not allow for automatic approval of foreign investments. Foreign investors are required to obtain licenses for manufacturing or service sector investments, and each license request must be considered individually. Although investments below NRS 1 billion (approximately USD 14 million) are referred to the Department of Industry for action without the involvement of the IPB, in reality, such investment proposals invariably go to the IPB. Foreign investors frequently complain about bureaucratic delays and lack of transparency in procuring investment licenses. In most cases, one to six ministries other than the Ministry of Industry review the business proposal and provide input prior to consideration by the IPB. Licensing of new investments can be time-consuming. Some foreign investors have reported that the licensing process requires a good lawyer and great patience. The law mandates, however, that the IPB make a licensing decision within 30 days of submission of application, provided all necessary information has been submitted.

Eligible Sectors

Foreign investment proposals must fall under existing industry categories, which include agriculture and forestry, manufacturing, electricity (water and gas), construction, hotels and resorts, transport and communication, housing and apartments, and a restricted range of services. To comply with its WTO commitments, Nepal recently opened service industries and a few other sectors to foreign investment. These sectors include business and management consulting, accounting, engineering and legal services, travel and trekking services, tourist lodging, international retail sales services, and production of alcohol or cigarettes. However, foreign investment is forbidden in the defense sector. Furthermore, the IPB will not license foreign investments that are judged to be either hazardous to general health or the environment.

Foreign investors are permitted to acquire real estate in the name of the business entity they own, but are not allowed to acquire real estate as personal property. Although local law permits foreign investors to buy shares on the local stock exchange, Foreign Exchange Regulations restrict repatriation of profits/dividends earned from trading shares. Therefore, investment in the local stock market is practically blocked for foreign investors. However, foreign investors are allowed to buy shares of government corporations by participating in the bidding for privatization of such corporations. In such cases, Nepal's Ministry of Finance sells the shares to the buyer after carrying out a lengthy screening during the bidding process.

The Privatization Act of 1994 generally does not discriminate between national and foreign investors. However, in cases where proposals from two or more investors are identical, the government gives priority to Nepali investors. To date fifteen state-owned corporations have been privatized, seven corporations have been liquidated, and two other corporations have been closed. The last privatization completed by the government was in January 2006. Out of the fifteen corporations privatized so far, foreign investors have taken over only two of them. The privatization process of three other state-owned corporations is currently underway. Two of Nepal's largest commercial banks, the Rastriya Banijya Bank (RBB) and Nepal Bank Limited (NBL), are being prepared for privatization. Under an agreement signed in January 2003 with Nepal Rastra Bank (Nepal's Central Bank), a group of foreign experts took over the management of RBB.

Visas

The GON offers different types of visas to investors and businesses. Potential investors are generally given six-month visas to conduct research and feasibility studies. To obtain a six-month visa, applicants must provide biographic information and a description of relevant work and professional experience. If the Department of Industry can readily identify the applicant as a legitimate business representative, the process can be expedited. Endorsement by a recognized foreign industrial enterprise is one means of accomplishing this.

Business visas are generally issued to approved investors for a period of one to five years. However, investors describe the business visa process as bureaucratic and time-consuming. Many say they spend more than 24 work hours per visa, over a period of 20 to 30 days.

Although the GON began issuing five-year, multiple-entry visas to resident foreign investors and their families in 1998, in actuality it has issued very few. In 1999, Nepal lowered its business visa fees; fees range from USD 250 for a five-year visa to USD 100 for a one-year visa. A non-tourist visa, however, costs USD $60 per month for the initial six month period. This visa period can be extended for another six months or more at an additional $60 per month.

-- CONVERSION AND TRANSFER POLICIES

The Foreign Investment and Technology Transfer Act of 1992, permits foreign investors to repatriate all profits and dividends, all money raised through the sale of shares, all payments of principal and interest on any foreign loans, and any amounts invested in transferring foreign technology. Foreign nationals working in industry are also allowed to repatriate 75 percent of their salaries, allowances, and emoluments, etc. Repatriation facilities (such as opening accounts or obtaining permission for remittance of foreign exchange) are made available on the recommendation of the Department of Industry, which normally provides approval of the original investment.

However, convertibility is difficult and not guaranteed. Repatriation of any funds needs approval from the concerned GON department and Nepal Rastra Bank, which regulates foreign exchange. In most cases, approval must be obtained from the Department of Industry. In other cases, such as telecommunications, the Nepal Telecommunications Authority (NTA) must approve the repatriation. In joint venture cases, NRB and the Ministry of Finance must approve. Because commercial banks process only the applications but do none of the oversight, the process slows down when it reaches the NRB, which must verify the authenticity of all requests. In the end, an overworked and inefficient banking system is to blame for slow approval of foreign exchange facilities. The actual experience of American and other foreign investors suggests that there are discrepancies between the government's stated policy of repatriation and its implementation.

To repatriate funds from the sale of shares, foreign investors apply to the Nepal Rastra Bank. For repatriation of funds connected with dividends, principal and interest on foreign loans, technology transfer fees, expatriate salaries, allowances, and emoluments, the foreign investor applies to the Department of Industry, and then to the Nepal Rastra Bank.

At the first stage of obtaining remittance approval, foreign investors must submit remittance requests to a commercial bank. Generally, foreign investors rated services provided by private banks as satisfactory. However, final remittance approval must be made by the NRB foreign exchange department, at which stage the process slows down significantly. For this reason, foreign investors rated the Nepal Rastra Bank's administration of exchange regulations as unsatisfactory.

In general, Nepalis are not permitted to invest outside of Nepal. Exceptions, however, can be granted on a case-by-case basis, and policing of the prohibition is weak. In 1995, a private airline was permitted to invest in a regional carrier based in Kolkata and represented the only instance of approved direct foreign investment by Nepalese nationals.

-- EXPROPRIATION AND COMPENSATION

The Industrial Enterprise Act of 1992 states that "no industry shall be nationalized." Nepal constantly reiterates this point in negotiations with private-sector firms interested in the hydropower sector. There have been no cases of nationalization in Nepal, nor are any anticipated.

Companies can be sealed or confiscated if they do not pay taxes in accordance with Nepali law. There are no official policies either existing or planned that suggest official expropriation should be of concern to prospective investors. There have been instances in the past in which unscrupulous local partners used the tax or regulatory systems to seize control of a joint venture firm from a U.S. investor. Such cases have not involved major Nepali business houses, however.

-- DISPUTE SETTLEMENT

In the event of a dispute with a foreign investor, the concerned parties are encouraged to settle it through consultation in the presence of the Department of Industry. If the dispute cannot be settled in this manner, cases involving investments less than NRS 500 million (approximately USD 7 million) in value will be referred to arbitration in Nepal according to the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL). For investments that exceed this amount, the government of Nepal will permit stipulation of legal jurisdiction other than Nepal in shareholder agreements and contracts.

There have been two investment disputes over the past few years in which the GON did not honor portions of contracts with foreign investors. These disputes have not been frequent, but investors should be aware that the GON might not fully comply with its contracts.

All real property transactions must be registered, and property holdings cannot be transferred without following established procedures. Even so, property disputes account for half of the current backlog in Nepal's overburdened court system, and such cases can take years to settle. Moreover, laws and regulations regarding property registration, ownership and transfer are unclear, and interpretation can vary from case to case.

There is also a provision for liquidation in the Company Act. Claimant priorities are: 1) government revenue, 2) creditors, and 3) shareholders. Monetary judgments are made in local currency.

Nepal adheres to the New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards, and has updated its legislation on dispute settlement to bring

its laws into line with the requirements of that convention. The Arbitration Act of 1999 allows the enforcement of foreign arbitral awards and limits the conditions under which those awards can be challenged.

-- PERFORMANCE REQUIREMENTS/INVESTMENT INCENTIVES

The Nepal Laws Revision Act of 2000 has eliminated most tax incentives, regardless of whether they were connected with performance requirements. Exports, however, are still favored, as is investment in certain "priority" industries. There is no discrimination against foreign investors with respect to export/import policies or non-tariff barriers. There is no local content or export performance requirement. There is no requirement that nationals own shares that the share of foreign equity is reduced over time, or that technology is transferred. However, in the recently opened service sectors and some cottage industries, permitted foreign investment limits range from 51 to 80 percent; the balance of the investment is reserved for Nepali nationals in order to form a joint venture with a foreign investor. On the other hand, Nepal does employ tax incentives to encourage industries to locate outside the Kathmandu Valley due to pollution and overpopulation and an interest in developing poorer parts of the coun
try.

In general, there is no income tax on profits from exports. Customs, value added tax (VAT), and excise duties are to be reimbursed within 60 days on raw materials used in the production of export items. In practice, however, these duty paybacks are often extensively delayed. In addition, income in certain priority industries is taxed at a concessional rate of 10 percent, as opposed to the usual 20 percent rate.

The Electricity Act of 1992 governs foreign investments in hydropower generation. That act allows developers an exemption from income tax for the first fifteen years of a project's operation and a 10 percent reduction in income tax for the remaining years. It also provides for a flat one percent customs rate on all construction materials, equipment and spare parts.

Foreign investors are not required to disclose proprietary information to government agencies as part of the regulatory approval process. There are no restrictions on participation by foreign firms in government-sponsored research and development programs; however, depending upon the nature and expertise required for the job, government agencies sometimes limit such programs to participation by Nepali nationals only.

-- RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

Foreigners are free to establish and own business enterprises and engage in all forms of business activity with the exception of a few industries. Prohibitions exist in the defense industry, real estate, and security printing sectors. In addition, the form of public participation is restricted in some areas. For instance, foreign banks have not yet been allowed to open wholly-owned subsidiaries or branch operations in Nepal.

The GON is moving slowly toward open competition in most sectors of the economy. Former public monopolies in banking, insurance, airline services, telecommunications and trade have already been eliminated, and the remaining restrictions on private and foreign operations in these areas are being scaled back.

Nepal does not have a law to guarantee free competition or to restrict unfair forms of competition. However, competitive equality is the official standard applied to private enterprises in competition with public enterprises with respect to market access, credit, and other business operations. That said, there are special subsidies and preferred credit arrangements for individual public and private companies in select sectors, such as rural electrification, fertilizer importation, and the provision of

agricultural credit. In a joint initiative of the private sector and the Ministry of Industry, Commerce and Supplies, a new "Competition Law" is being drafted. Although Nepal committed to the enactment of the Competition Law during the negotiation process for its entry to the World Trade Organization (WTO), Nepal missed the July 31, 2004 deadline for its enactment.

-- PROTECTION OF PROPERTY RIGHTS

The Contract Act of 2000 incorporates many new features, including provisions recognizing mortgages, sales, appointment of agents, and shipment of goods as contracts. Protection of intellectual property rights is inadequate. Patent registration, according to the 1965 Patent Design and Trademark Act, is only valid for seven years and can be extended twice for a total period of twenty-one years. In addition, Nepal does not automatically recognize patents awarded by other nations. The Copyright Act of 2002 is similar in that it does not recognize foreign patents; these must be re-registered in Nepal. However, the Act covers most modern forms of authorship and provides adequate periods of protection. Enforcement is weak, with the result that much of the software and most sound or video recordings now circulating in Nepal are pirated. As per the commitment made by the country on its accession to the World Trade Organization, Nepal must enact new legislation on trade-related intellectual property rights to b
ring the country into compliance with international norms. Nepal has not yet signed the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Trademarks must be registered in Nepal to receive protection. Once registered, trademarks are protected for a period of seven years. Enforcement is very poor.

-- TRANSPARENCY OF THE REGULATORY SYSTEM

Foreign investors in Nepal face a non-transparent legal system. Firms complain that basic legal procedures are neither quick nor routine. The bureaucracy is generally reluctant to accept legal precedents. As a consequence, businesses are often forced to re-litigate issues that had been previously settled. Furthermore, legislation banning foreign investment in financial, legal, and accounting services has made it difficult for investors to find help cutting through regulatory red tape.

Labor, health, and safety laws exist but are not properly enforced. Some companies report that the process of terminating unsatisfactory employees is cumbersome and that protective labor laws make it very difficult to bring skilled foreign-national specialists such as pilots, engineers, or architects into Nepal.

-- EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Credit is generally allocated on market terms, although special credit arrangements exist for farmers and rural producers through the Agricultural Development Bank of Nepal. Foreign-owned companies can obtain loans on the local market. The private sector has access to a variety of credit and investment instruments. These include public stock and direct loans from finance companies and joint venture commercial banks.

Legal, regulatory, and accounting systems are neither fully transparent nor consistent with international norms. Though auditing is mandatory, professional accounting standards are low, and many practitioners are either poorly trained or lacking in business ethics. Under the circumstances, published financial reports are unreliable, and investors are better advised to rely on general business reputations, except in the few cases in which companies have applied international accounting standards.

The Nepali banking system is small, fragmented, and, in some

cases, plagued by bad loans. Banking system assets totaled approximately USD 5.73 billion on 15 July 2005, the end of FY 2004-05. Banking system capital (total deposit) in the same period totaled USD 4.04 billion. 18.7 percent of the total asset base is estimated as non-performing as of July 15, ¶2005. Foreign commercial lending is also scarce and expensive. Currently, there are no resident or non-resident foreign commercial banks that have standing credit limits for loans of a maturity of more than one year.

There is no regulatory system to encourage and facilitate portfolio investment in the industrial sector. The GON has made certain exceptions to promote Foreign Direct Investment (FDI) in tourism and hydropower. In these sectors, there can be 100 percent direct foreign investment or up to 25 percent portfolio investment through purchase of stocks on the Nepal Stock Exchange, where a few industrial firms are listed. Lack of transparency or regular reporting of reliable corporate information also presents problems for foreign investors in equity markets. There are no legal provisions to defend against hostile takeovers.

-- POLITICAL VIOLENCE

For the past ten years, Nepal has been wracked by a violent Maoist insurgency. The violence has spread to the Kathmandu Valley, although to a lesser degree than in the rest of the country. Hardly any district has been left unaffected by the insurgency. On June 6, 2005, Maoists detonated a landmine underneath a crowded bus in the Chitwan district (170 km southwest of Kathmandu), killing or injuring over a hundred civilians. Foreigners, particularly aid workers, have been threatened, and there have been several incidents of Maoist insurgents attacking establishments of NGOs and INGOs working in different parts of Nepal. Many business owners report they have received extortion threats from the Maoists. The insurgents have increased their rhetoric against foreign-owned industries operating in Nepal. Over the past few years, Maoists have set off explosives at several foreign-owned as well as domestic industries operating in Nepal. In July 2004, the Maoist-affiliated All Nepal Trade Union Federation forced
more than a dozen local as well as foreign joint venture industries to shut down their operations completely; the forced closure lasted a little over one month. In December 2004, Indian Hotels Company Ltd. (IHCL), owner of the Taj hotel chain in India, pulled out of a contract for a five-star hotel in Kathmandu, citing security concerns. Intensified attacks on industries by Maoist rebels in 2005 resulted in several large domestic and foreign joint venture companies deciding to either suspend or close their operations in Nepal.

The Maoists also attacked and destroyed village-level government infrastructure, including small electricity projects, bridges, and drinking water systems. Because of severe constraints in both personnel and resources, the government's ability to protect basic infrastructure, local government offices, businesses, and other installations is limited. On January 2, 2006, the Maoists withdrew their unilateral ceasefire that began on September 3, 2005. With the end of the ceasefire there is an increasing level of uncertainty regarding the security situation in Nepal. Recent media reports have stated that the Maoists have moved their personnel into urban areas such as Kathmandu and Pokhara. In the past, Maoist urban tactics included attacks on government security forces and facilities, indiscriminant bombings using improvised explosive devices, and assassination attempts against government officials. Recent media reports imply that the Maoists may resume these tactics, which were common in 2003 and 2004. Ope
n conflict between the Maoists and government security forces in rural areas, including popular trekking routes, is also possible.

The risk of possible Maoist violence must be taken into account by any foreign firm wishing to invest in Nepal. The Department of State Travel Warning for Nepal, dated December

15, 2005, urges U.S. citizens to defer non-essential travel to Nepal. Maoist supreme commander Prachanda issued a press statement on July 1, 2004, threatening to use "more violent means" if peace talks with the Government of Nepal were not forthcoming or were unsuccessful. The U.S. Department of State continues to regard this as an ongoing statement of intent. The Embassy has periodically received information that the Maoists may attempt to attack or take actions specifically against U.S. citizens as part of that contingency, particularly in regions of the country where Maoists are most active. On a number of occasions, Maoists have burned or bombed tourist resorts after foreigners staying there were given short notice to evacuate. Maoists also periodically detonate bombs within Kathmandu itself.

The Department of State has designated the Communist Party of Nepal (Maoist) as a Terrorist Organization under the "Terrorist Exclusion List" of the Immigration and Nationality Act and under Executive Order 13224. These two designations make Maoists excludable from entry into the United States and bar U.S. citizens from transactions such as contribution of funds, goods, or services to, or for the benefit of, the Maoists.

U.S. citizens are advised to avoid road travel outside the Kathmandu Valley unless they have reliable information that they can proceed safely in specific areas at specific times. During road closures, Maoist cadres have attacked commercial trucks, buses and private vehicles defying their blockades, sometimes killing or severely injuring drivers. In April 2005, two Russian tourists were injured when a bomb exploded on the highway near their taxi while driving east toward Jiri, Dolakha district. During announced road closures in the past, the Embassy received widespread reports of Maoists forcibly blocking major roads throughout the country, including roads to Tibet, India, Chitwan, Pokhara, and Jiri. During some closures, some districts were blockaded without warning. At times, Maoists have forcibly blocked all traffic coming into and out of the Kathmandu Valley. U.S. citizens are encouraged to contact the U.S. Embassy in Kathmandu for the latest security information, and to travel by air whenever possi
ble.

Because of heightened security risks, U.S. official personnel do not generally travel by road outside the Kathmandu Valley. All official travel outside Kathmandu Valley, including by air, requires specific clearance by the Regional Security Officer. As a result, emergency assistance to U.S. citizens may be limited.

U.S. citizens who travel or reside in Nepal should factor the potential for violence into their plans, avoid public demonstrations and maintain low profiles while in Nepal. U.S. citizens are urged to register with the Consular Section of the Embassy by accessing the Department of State's travel registration site at https://travelregistration.state.gov or by personal appearance at the Consular Section. The Consular Section is located at the Yak and Yeti Hotel complex in Durbar Marg. The section can be reached directly at (977-1) 444-5577 or through the Embassy switchboard. The U.S. Embassy is located at Pani Pokhari in Kathmandu, telephone (977-1) 441-1179; fax (977-1) 444-4981. The Consular Section can provide updated information on travel and security.

Public demonstrations and strikes are popular forms of political expression in Nepal and may occur on short notice. Political parties have indicated that they plan to continue to hold protests and/or mass demonstrations against the government. Protestors in the past have used violence, including burning vehicles, throwing rocks during street demonstrations, and burning tires to block traffic. In some cases, police have responded with tear gas and baton charges. During general strikes, many businesses close for one or two days, and transportation and city services may be disrupted. These strikes usually result in little or no damage to private property.

-- CORRUPTION

U.S. firms and other foreign investors have identified pervasive corruption as an obstacle to maintaining and expanding their direct investments in Nepal. There are also frequent allegations of corruption by Nepalese government officials in the distribution of permits and approvals, in the procurement of goods and services, and in the award of contracts.

Combating corruption is the responsibility of the Commission for Investigation of Abuse of Authority (CIAA) and of the National Vigilance Center under the Ministry of Home Affairs. In the past, the Parliamentary Public Accounts Committee (PAC) has also played an active role in publicizing cases of misconduct on the part of GON officials. Since restoration of the multi-party system, the local media has been particularly proactive in unearthing and reporting cases of corruption within the government. Investigative commissions and committees are often formed to look into major cases of corruption that come to light. Officially, giving or accepting a bribe is a criminal act, punishable by imprisonment for one to six years, a fine, or both, depending on the degree of offense committed. In the past year and a half, the CIAA has increased its prosecution of cases and has begun investigations of prominent political figures and government officials. In some cases, the Special Court for Corruption has convicted t
he accused and in at least one case the convicted is serving a jail sentence.

After the Royal-takeover of February 1, 2005, King Gyanendra formed an anti-corruption panel, the Royal Commission for Corruption Control (RCCC), to investigate cases of corruption in the government, as well as prosecute and judge the accused. The RCCC has since investigated and prosecuted several high-level government officials on charges of corruption. In one such case, the RCCC convicted former Prime Minister Sher Bahadur Deuba and former Minister Prakash Man Singh for corruption and sentenced them to two years in jail and a fine of USD 1.28 million. A case is pending before the Supreme Court questioning the constitutionality of the RCC, which has been criticized both nationally and internationally.

-- BILATERAL INVESTMENT AGREEMENTS

Nepal has signed bilateral investment treaties with India, Britain, Germany and Norway.

-- OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

The Overseas Private Investment Corporation (OPIC) is free to operate in Nepal without restriction. OPIC is empowered to offer its "extended risk guarantee" facility to prospective U.S. investors in Nepal. Nepal is also a member of the Multilateral Investment Guarantee Agency (MIGA), which it joined in 1993.

-- LABOR

Nepal lacks a large labor force of skilled and educated workers. The overall literacy rate is only 40 percent, and only 25 percent for females. Vocational and technical training is poorly developed, and the national system of higher education is overwhelmed by large enrollments. Many secondary and college graduates are unable to find employment in positions commensurate with their education because most of the schools and institutions do not provide job related training. The employment of foreigners is also severely restricted. Under current law, the Department of Immigration must approve the employment of foreigners for all positions except those at the very top of a company or project. In private organizations, however, a significant number of professionals from India may be found in mid-level managerial positions.

The Constitution provides for the freedom to establish and

join unions and associations. It permits restrictions on unions only in cases of subversion, sedition, or similar conditions. Despite the institution of parliamentary democracy in 1990, trade unions are still developing their capacity to organize workers, bargain collectively, and conduct worker education programs. The three largest trade unions are affiliated with legal political parties; the Maoists also have an active affiliate trade union. Total union participation is close to 900,000, which accounts for only about 10 percent of the total labor force. Excluding agriculture labor, a much higher percentage of the formal sector participates in unions.

In 1992, Parliament passed the Labor Act and Trade Union Act, and formulated enabling regulations. However, the government has not yet fully implemented those laws. The laws permit strikes, except by employees in essential services such as water supply, electricity, and telecommunications. The laws also empower the government to halt a strike or suspend a union's activities if the union disturbs the peace or adversely affects the nation's economic interests. Under the Labor Act, 60 percent of a union's membership must vote in favor of a strike in a sec ret ballot for the strike to be legal. The government does not restrict unions from joining international labor bodies. Several trade federations and union organizations maintain a variety of international affiliations. While officially there is no government interference in union registration, unions have complained of difficulties in registering members when opposing political parties are in power.

While industrial actions are infrequent, politically motivated actions do sometimes take place. Unrealistic laws, such as the Bonus Act of 1974, which provides that workers must receive 10 percent of yearly profits in bonuses regardless of improvements in productivity, often hamper efforts at collective bargaining. In the past, labor strikes, transporter strikes and other political actions have closed all business and transport operations in major cities, sometimes for days at a time. Such strikes have severely damaged Nepal's business climate, and have hurt the tourism sector in particular. Strikes are unpopular, but are widely viewed as the only available means of political or labor protest. In 2001, there were frequent reports of Maoist-affiliated agitators disrupting work at garment and carpet factories in the Kathmandu Valley. From 2001 to 2005, with the decline in garment exports, such agitation has almost disappeared. Frequent transportation and business closures (bandhs) called by the Maoists a
nd political parties, however, affected trade and industry in 2004 and 2005.

The Child Labor Prohibition and Regularization Act of 2000 prescribes conditions for 14- to 16-year-old laborers, and prohibits employees under the age of 16 from work in dangerous industries.

-- FOREIGN TRADE ZONES/FREE PORTS

Nepal has no Foreign Trade Zones, Free Ports or Export Processing Zones. However, any industry exporting 90 percent or more of its products is entitled to import raw materials and capital goods without payment of custom duties, excise taxes or sales taxes.

-- FOREIGN DIRECT INVESTMENT STATISTICS (AS OF DECEMBER 27, 2005)

Total No. of projects	1,025
Agriculture & Forestry	14
Manufacturing	478
Electricity, Water, Gas	21
Construction	30
Hotel & Resort	246
Transport & Communication	26
Housing & Apartment	17
Service Industries	193

Total Project Cost: USD 1,728.90 million

Total Fixed Cost: USD 1,453.92 million

Total Foreign Investment: USD 458.16 million

Total Employment Generated: 102,229

Source: Foreign Investment Division, Department of Industry, HMG/Nepal.

Note: As of December 15, 2005, India was by far the most important foreign investor in Nepal, with over 31 percent of the projects. It was also involved in five of the ten largest foreign enterprises. In terms of total foreign investment, the United States is second; China, third; the British Virgin Islands, fourth; Norway, fifth; Japan, sixth; and South Korea, seventh.

-- U.S. INVESTMENT IN NEPAL (AS OF DECEMBER 27, 2005)

Total No. of projects 95

Agriculture and Forestry	2
Manufacturing	30
(9 units have either been cancelled or closed)	
Energy Based	1
Tourism Industry	25
(2 units have been cancelled)	
Service Industries	37

Total Project Cost: USD 225.53 million

Total Fixed Cost: USD 204.86 million

Total Foreign Investment: USD 72.27 million

Total Employment Generated: 8,074

Source: Foreign Investment Division, Department of Industry, HMG/Nepal.

End Text.
MORIARTY